



GOVERNMENT OF INDIA

Chandigarh Administration Gazette

Published by Authority

NO. 148] CHANDIGARH, WEDNESDAY, NOVEMBER 23, 2022 (AGRAHAYANA 02, 1944 SAKA)

OFFICE OF THE DISTRICT MAGISTRATE, CHANDIGARH

Order under Section 144 Cr.P.C.

The 16th November, 2022

No. DM/MA/2022/26979.—Whereas it has been made to appear to me that there is an apprehension that anti-social elements may make their hideouts clandestinely in the residential/commercial areas of the Union Territory of Chandigarh. If suitable measures to prevent the same are not taken, the unlawful activities of these people can cause breach of peace and disturbance of public tranquility besides posing grave danger to human life and safety and injury to public property.

And whereas, I, Vinay Pratap Singh, I.A.S., District Magistrate, U.T., Chandigarh, am of the opinion that some check is necessary on landlords/owners/managers of residential/commercial establishments so that anti-social elements in the guise of ordinary tenants, domestic servants & Paying Guests may not cause harm to the citizens and that immediate action is necessary for prevention of the same.

Now therefore, I, Vinay Pratap Singh, I.A.S., District Magistrate, U.T., Chandigarh in exercise of the powers vested with me under section 144 of the Cr.P.C., do hereby order as an emergency measure that, no landlord/owner/tenant/manager of residential, commercial, etc. establishments shall rent out or sub-let any accommodation to any person, unless and until he/she has furnished the particulars of the said tenants or Paying Guests to the local Police Station. Also, no landlord/owner/tenant/manager of residential, commercial, etc. establishments shall employ any servant unless and until he/she has furnished the particulars of the said servant(s) to the local Police Station. All the persons who intend to offer accommodation on rent or employ any servant shall inform in writing the particulars of tenants, Paying Guests & servants to the Station House Officer concerned in whose jurisdiction the premises fall. Any breach of this order would invite action under section 188 of the Indian Penal Code.

In view of the emergent nature of the order, it is being issued *ex parte* and is addressed to the public in general.

This order shall come into force with effect **from zero hours on 20.11.2022** and shall be effective for a period of sixty days **up-to and including 18.01.2023** and is applicable to those also who already have domestic servants/maids and has not informed the Police yet when the order is in force.

This order shall be promulgated by affixing copy thereof at the Notice Boards of the office of the undersigned as well as the District Courts, Chandigarh and publication in the newspapers having circulation in the area, through the office of the D.P.R., Chandigarh.

Signature Verified
Digitally signed by
Jalinder Kumar
Date: 2022.11.23
15:27:14 IST
Reason: Published
Location:

Given under my hand and seal on 19-11-2022.

VINAY PRATAP SINGH, I.A.S.,
District Magistrate,
Chandigarh.

(1117)

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OFFICE OF THE DISTRICT MAGISTRATE, CHANDIGARH

Order under Section 144 Cr.P.C.

The 16th November, 2022

No. DM/MA/2022/26983.—Whereas, the Chandigarh Administration has earmarked the Rally Ground, Sector 25, Chandigarh for taking out processions, rallies, dharnas, etc. and no permission has been granted by the Chandigarh Administration to organize processions, rallies, dharnas, etc. elsewhere in the city other than the designated location, i.e., Rally Ground, Sector 25, Chandigarh and the same has been done to avoid traffic congestion, keeping in view of the convenience of the general public.

Whereas, it has been made to appear to me that certain groups of people plans to organize processions, rallies, dharnas, etc., and resort to other agitation methods in the city other than the earmarked/ designated place i.e. Rally Ground, Sec-25, Chandigarh and whereas, there is an apprehension that such groups/organizations/unions may cause obstruction, annoyance or injury to the persons lawfully employed or other general public and endanger human life and property, disturb public peace and tranquility and cause riots and affrays.

And therefore I, Vinay Pratap Singh, I.A.S., District Magistrate, Chandigarh, am of the opinion that taking out procession, rally, protest, strike, making speeches, raising slogans by gathering/assembly of 5 or more people etc. within the territory of U.T., Chandigarh other than Rally Ground, Sec 25, Chandigarh, would cause obstruction, annoyance or injury to persons lawfully employed or other general public, disturb public peace and tranquility and cause riots and affrays and that immediate action is necessary for the prevention of the same.

Now therefore, I, Vinay Pratap Singh, I.A.S., District Magistrate, Chandigarh, in exercise of the power vested u/s 144 of Cr.P.C., do hereby order as a measure of emergency that the public in general or any member thereof is prohibited from taking out procession, rally, protest, strike, making speeches, raising slogans of gathering/assembly of 5 or more people etc. within the territory of U.T., Chandigarh other than Rally Ground, Sec-25, Chandigarh, for a period of 60 days.

Further, prior permission for organizing procession, rally, protest, strike, making speeches, raising slogans, gathering/assembly of 5 or more people etc. at Rally Ground, Sector-25, Chandigarh must be obtained from the Competent Authority, i.e., the District Magistrate/concerned Sub Divisional Magistrate, U.T., Chandigarh.

Provided that the above order shall not apply to :

- (I) The police or Para-military or military persons or any other Government servant on official duties;
- (II) The processions or meetings for which prior permission in writing of the District Magistrate/concerned Sub Divisional Magistrate, Chandigarh, has been obtained;
- (III) The customary and ritualistic procession in connection with weddings and funerals.

This order shall come into force from zero hours on 19.11.2022 and shall be effective for a period of sixty days up to and including 17.01.2023.

In view of the emergent nature of the order, it is being issued *ex parte* and is addressed to the public in general. Any breach of this order would invite action under section 188 of the Indian Penal Code.

This order shall be promulgated by affixing copy thereof at the Notice Boards of the office of the undersigned as well as the District Courts, Chandigarh and publication in the newspapers having circulation in the area, through the office of the D.P.R., Chandigarh.

Given under my hand and seal on 18-11-2022.

VINAY PRATAP SINGH, I.A.S.,
District Magistrate,
Chandigarh.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 27th October, 2022

No. 13/1/9904-HII(2)-2022/15936.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 53/2018, dated 13.09.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SAPNA R/O HOUSE NO.1430/11, SECTOR 29-B, CHANDIGARH -160030 (Workman)

AND

TANISHQ (M/S TITAN COMPANY LIMITED), SCO NO.43, POCKET NO.1, NAC MANIMAJRA, CHANDIGARH THROUGH ITS MANAGER / MANAGING DIRECTOR / OCCUPIER / PARTNER (Management)

AWARD

1. The workman, Sapna, has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman was employed by the management in October, 2008 on regular basis as Sales Executive and she was promoted in the month of April, 2014 as Floor Manager on company payroll and she continued working from October 2008 till 30.06.2017 i.e. for a period of 9 years continuously without any break. At the time of illegal termination of services of the workman, she was being paid ₹ 24,000/- per month. The applicant was not given her next appraisal in March, 2017. The marriage of the workman was solemnized at Chandigarh on 4th December, 2015 and in the month of December, 2015, the workman became pregnant and when this fact came to the notice of the management, the management started mentally harassing, teasing, taunting and passing un-parliamentary language against the workman during her working hours. On 30.06.2016 the management threw the workman out of job. The workman requested the employer that she will continue to work honestly, sincerely and with dedication as per past period and she will not give any chance of complaint regarding work from 10:00 A.M. to 8:00 P.M. Upon which the management again kept the workman in service. The workman gave birth to her first child on 29.08.2016. She took care of her child up to 5 months i.e. up to 8th February, 2017. When the workman was pregnant for four months, she was kicked out of job. Thereby she remained out of job from 30.06.2016 to 08.02.2017. No monetary benefits such as salary, leave, bonus etc. were given to her by the management from 30.06.2016 to 08.02.2017. The workman request the management for giving her salary, compensation / leave / maternity bonus and other benefits etc. from 2016 to 2017 but the management flatly refused to give the same. The workman again became pregnant for 2nd time in the month of April 2017. The workman brought this fact to the notice of the management in May 2017. The management again started harassing the workman, as per past practice, and ultimately the management kicked the workman out of job on 30.06.2017. The workman gave birth to 2nd child on 15.12.2017 thereby she remained out of job from 30.06.2017 to till date. Neither any salary nor any compensation / maternity benefits, bonus benefits etc. were paid to her irrespective of her repeated requests. By orally terminating the services of the workman, the management has violated all the provisions of the Maternity Benefits Act, 1961 and the rules made thereunder. As per the provisions of Section 12 of the above said Act, it shall be unlawful for the employer to discharge or dismissed a pregnant female employee to vary to her disadvantage any of the conditions of her service. The workman continued her

work in the company regularly till 30th June, 2017. On 01.07.2017 the services of the workman were illegally terminated by refusing to allow her to join duty. The nature of job of the workman continued to be the same. The nature of job was purely modern technically and the workman was not performing any supervisory or managerial duties. The services of the workman were illegally terminated by the company on the pretext that the work of her department not performed better on the job but the background of illegal termination of her services is that the workman had demanded maternity benefits under the Maternity Benefit Act, 1961, which were not given to her. While terminating the services of the workman, junior workmen were retained in service and new person was employed against her post. Action of the management amounts to unfair labour practice, as contained in Section 25-T of the ID Act read with point No.10 of Schedule - V. Termination of services of the workman is in violation of Section 25-G & 25-H of the ID Act. The management used to get signature of the workman on the blank vouchers and papers. The workman is a poor and also the head of multimember family. The maintenance of her family has been paralyzed due to illegal action of the management and she is facing all difficulties of unemployed person. Before terminating the services of the workman, no charge sheet was issued so no inquiry was held. Hence, the termination order passed by the management is wholly illegal and unjustified and against the established law. The action of the management in terminating the services of the workman w.e.f. 30th June, 2017 is highly violative to principles of natural justice. Prayer is made that the award for reinstatement with continuity of service and with full back wages along with all the attending benefits with 12% compound interest may be passed in favour of the workman and against the management.

2. On notice, the management appeared through its authorized representative and contested the claim of the workman by filing written statement on 17.07.2019, wherein preliminary objections are raised on the ground that Titan Company Limited is a joint venture between the TATA Group and the Tamil Nadu Industrial Development Corporation (TIDCO), which commenced operations in 1984 under the name Titan Watches Limited. Titan Company is the fifth largest integrated own brand watch manufacturer in the world. TATA group among other things is world renowned as being an employee friendly company. The claimant-workman is not covered under the definition of 'workman' as defined under Section 2(s) of the ID Act. Therefore, the present proceedings de hors the Principal Act and as such, any proceedings (including the present ones) undertaken under the ID Act are nothing but an abuse of process of law. The claimant was performing the duties of Floor Manager and as such was a part of supervising sales staff of the management. As a part of her duties, the claimant was supposed to monitor, motivate the sales staff / Sales Executives and was also in-charge of maintaining the discipline in the store where she was working. The claimant was also in-charge of taking stock management / inventory management and reviewing customer's experience. The complainant was earning more than ₹ 10,000/- per month out of her employment with the management. The estimated earnings of the claimant, at the time of her joining were as follows :—

Sr. No.	Description	Monthly Benefits	Monthly	Yearly
1.	Basic Salary		₹ 10,800/-	₹ 1,29,600
2.	House Rent Allowance		₹ 5,400/-	₹ 64,800/-
3.	Education Allowance		₹ 500/-	₹ 6,000/-
4.	Transport Allowance		₹ 1,000/-	₹ 12,000/-
5.	Personal Allowance		₹ 1,050/-	₹ 12,600/-
6.	Leave Travel Allowance		₹ 1,500/-	₹ 18,000/-
7.	Medical Allowance		₹ 1,000/-	₹ 12,000/-
8.	Gross Salary		₹ 21,250/-	₹ 2,55,000/-

Annual Cash Benefits		
9.	Bonus / Ex-Gratia - Approx	₹ 2,700/- ₹ 32,400/-
Annual Welfare Benefits		
10.	Medi-claim (HOSP) - Premium	₹ 321/- ₹ 3,852/-
Retrial Benefits		
11.	Provident Fund @ 12%	₹ 1,296/- ₹ 15,552/-
12.	Gratuity @ 4.81%	₹ 519/- ₹ 6,228/-
Monthly Sales Incentive		
13.	Prolip @ 100 Target Achm	₹ 9,562/- ₹ 1,14,750/-
Grand Total		₹ 35,648/- ₹ 4,27,782/-

The total earnings of the claimant, as a result of her employment with management, was about ₹ 30,000/- to ₹ 35,000/- per month. Termination of the services of the claimant by the management does not fall within the meaning of the term industrial dispute, as has been used and defined under the ID Act. The services of the claimant have been terminated on completion of probation period on the ground that her services were not found satisfactory. This would not be covered under the meaning of the term 'retrenchment' within the meaning of Section 2(oo) of the ID Act. At the time of termination, the claimant was given cheque No.811802 dated 23rd June, 2017 drawn on Standard Chartered Bank for an amount of ₹ 77,408/- towards one month's salary (June, 2017) in lieu of notice as well as leave encashment (₹ 21,280/-). The workman came in the employment of the management only with effect from 01.04.2015. The management, prior to appointment of the claimant (w.e.f. 01.04.2015), had hired an outsourcing company by the name of Manpower Group for supply of sales executive. As such the workman was not in the direct employment of the management prior to 01.04.2015 but was working as an outsourced employee. M/s Manpower Group had appointed the claimant on its roles on 24.05.2014. *Vide* letter dated 09.02.2015, M/s Manpower Group relieved the claimant from her services w.e.f. 31.03.2015. As per appointment letter of the claimant issued by the management, the services of the claimant were terminable by one month's notice on either side without assigning any reasons and the claimant was to remain on probation for a period of one year w.e.f. 01.04.2015. After remaining on probation for a year, the management reviewed the services / performance of the claimant as a Floor Manager (being a managerial post). The annual / special review appraisal of the claimant dated 11.03.2016 reveal that the claimant did not fair very well in the said appraisal. In none of the rating factors she scored an 'A' or 'B' rating. The comments given to the claimant were "She is not a natural leader, staff does not feel confident under her leadership". *Vide* letter dated 17.03.2016, the probation of the complainant was extended for a period of 3 months. This was done with a hope that the complainant would improve herself and this was an opportunity for her to enable her to perform better employment. On 08.08.2016, another review of the performance / employment of the claimant was done by the management but the performance of the claimant did not improve at all. *Vide* letter dated 30.06.2016, the probation period of the complainant was further extended for a period of 3 months as no decision had been taken regarding retaining the employment of the claimant with the management. On 04.07.2016, a decision was taken to terminate the services of the claimant as she was still on probation and her services were not up to the mark / standard. As soon as, the news of her termination reached the complainant, she announced that she was pregnant. The management, being a member of the TATA Group and the TATA Group being known for being employee friendly, the termination letter was not served on the complainant and she was allowed to proceed on maternity leave from 04.08.2016 to 05.02.2017. Since the claimant was

allowed to proceed on maternity leave by the management and her period of probation was coming to an end on 31.12.2016 *vide* letter dated 29.12.2016 the probation period of the claimant was once again extended for a period of 3 months i.e. up to 31.03.2017. The probation period of the claimant was once again extended till 30.06.2017 *vide* letter dated 04.04.2017. On 09.06.2017, an annual review / appraisal was conducted regarding the services / employment of the claimant with the management. The performance of the workman in employment of the management remained week / poor / very poor ab-initio and the same kept deteriorating through the course of her employment. However, due to the fact that the workman became pregnant on two occasions, the management decided against terminating her employment / services and kept paying her salary. Finally *vide* letter dated 23.06.2017 the management terminated the services / employment of the claimant as she was an underperforming employee on probation. At the time of the termination of the services of the complainant, she was given cheque of ₹ 77,408/- towards one month's salary in lieu of notice period and leave encashment but the claimant chose not to encash the cheque so the said amount was transferred in her bank account through RTGS.

3. On merits, similar stand is taken as taken in the preliminary objections. Rest of the averments of the statement of claim are denied being wrong. Prayer is made that the claim of the claimant be dismissed.

4. The workman filed replication, wherein the contents of written statement are denied as wrong and the averments of the statement of claim are reiterated.

5. From the pleadings of the parties, following issues were framed *vide* order dated 23.02.2021 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OPW
2. Whether Ms. Sapna is not a 'workman' as defined under Section 2(s) of the ID Act ? OPM
3. Relief.

6. In evidence, the workman examined himself as AW1 and tendered her affidavit Exhibit 'AW1/A' along with documents :—

Exhibit 'W1' - Aadhar card of Baby, mother's name Sapna, Date of trial 29.08.2016;

Exhibit 'W2' - Copy of birth certificate of Baby name - not mentioned, Sex - Male, Date of Birth 15.12.2017, mother's name Sapna;

Exhibit 'W3' - Copy of relevant provision of Contract Labour (R&A) Act, 1970 relating to increase in wage limit under Payment of Wages Act, 1936 - *"In exercise of the power conferred by sub-section (6) of Section 1 of the Payment of Wages Act, 1936 (Act) the Ministry of Labour & Employment vide its notification dated August 28, 2017 has raised the monetary limit of wages to ₹ 24,000/- (Rupees Twenty Five Thousand Only) per months for the applicability of the Act."*

Exhibit 'W4' - Copy of OPD card of Sapna dated 09.06.2017 of GMSH, Sector 16, Chandigarh.

Exhibit 'W5' - Copy of ultrasound report dated 06.07.2017 of Sapan issued by Dr. S. S. Kang, MD Radio Diagnosis.

Exhibit 'W6' - Copy of Anand Marriage Certificate issued by General Secretary / President, Gurudawara Siri Guru Singh Sabha (Regd.), Sector 29-B, Chandigarh (U.T.) relating to marriage of Sapna with Varinder Singh S/o Jagat Singh solemnized on 04.12.2015.

Mark A - Copy of written complaint dated Nil moved by Sapna to the Labour Inspector, Labour Court, Chandigarh on the subject of termination during her pregnancy.

Mark B - Copy of demand notice dated Nil under Section 2-A issued by Sapna to Titan Company Limited Tanishq.

On 02.09.2021 learned representative for the workman closed the evidence.

7. On the other hand, the management examined MW1 Prabhakar Kumar, who tendered his affidavit Exhibit 'MW1/A' along with documents Exhibit 'MX7' to 'MX11'. Document Exhibit 'MX1' to Exhibit 'MX6' all put in cross-examination to AW1.

Exhibit 'MX1' - Copy of appointment letter dated 23.05.2014 issued by Manpower Group Service India Pvt. Ltd. to Sapna Sharma.

Exhibit 'MX2' - Copy of annual / special review appraisal dated 11.03.2016 relating to Sapna, Floor Manager bearing comments of Reviewer that she is not a natural leader, staff is / does not feel confident under her leadership so probation extended for 3 months.

Exhibit 'MX3' - Copy of letter dated 17.03.2016 relating to extension of probation of Sapna up to 30.06.2016 wherein it is mentioned that *"We are confident that you will learn the various phases of work in this extended period of the probation, failing which we will be constrained to terminate your services effective 30th June 2016."*

Exhibit 'MX4' - Copy of annual / self-appraisal dated 08.06.2016. Comments of Reviewer :- *"Discipline in major issue. Even after 2.5 months her late / sudden leaves coming did not come down, leadership is again an issue, being so much experience never able to understand importance of store."*

Exhibit 'MX5' - Copy of letter dated 30.06.2016 of extension of probation up to 31.12.2016 relating to Sapna issued by Titan Company wherein it is mentioned that *"We are confident that you will learn the various phases of work in this extended period of probation failing which we will be constrained to terminate your service effect 31st December 2016."*

Exhibit 'MX6' - Copy of annual / special review appraisals dated 12.06.2017 of Sapna - Floor Manager. Comments of Reviewer:- *"Not to be confirmed"*

Exhibit 'MX7' - Notary attested copy of agreement dated 22.02.2007 between Titan Industries Limited and Durga Jewellers.

Exhibit 'M8' - Notary attested copy of relieving-cum-experience letter dated 09.02.2016 issued by Manpower Group services Ltd. relating to Sapna, Floor Manager incorporating therein *"In accordance with the resignation information / intimation received from you, Sapna (Emp. Code - 100256476) working as Floor Manager, since 24.05.2014, deputed at M/s Titan Company Ltd. and subsequent acceptance of the same, you are hereby relieved from your service on the closing of business hours 31/03/2015."*

Exhibit 'MX9' - Copy of appointment letter dated 01.04.2015 issued to Sapna by Titan Company Limited.

Exhibit 'M10' - Notary attested copy of salary statement relating to Sapna issued by Titan Company Limited for the period April 2015 to April 2016, accompanied with pay slips of May, 2016, July 2016, August 2016, September 2016, October 2016, November 2016, December 2016, January 2017, February 2017, March 2017, April 2017, May 2017.

Exhibit 'MX11' - Copy of account payee Cheque No.811602 dated 23.06.2017 in favour of Sapna for sum of ₹ 77,408/- drawn on Standard Chartered Bank.

On 09.09.2022 learned representative for the management closed the evidence.

8. I have heard the arguments of learned representative for the parties and perused the judicial file. My issue-wise finding are as below :—

Issue No. 1 :

9. Onus to prove this issue is on the workman.

10. Under this issue the workman Sapna examined himself as AW1 and vide her affidavit Exhibit 'AW1/A' deposed the averments of statement of claim in toto. AW1 supported his oral version with documents Exhibit 'W1' to 'W6' and Mark 'A' & 'B'.

11. On the other hand, learned representative for the management referred the testimony of MW1 Prabhakar Kumar, who vide affidavit Exhibit 'MW1/A' deposed all the contents of written statement. To support his oral version, learned representative for the management referred documents Exhibit 'MX1' to 'MX11'.

12. From the oral as well as documentary evidence led by the parties, it comes out that the workman Sapna has alleged that she is working on regular basis as Sales Executive with M/s Tanishq / M/s Titan Co. Ltd. since October 2008. In April 2004 she was promoted as Floor Manager and thus continuously worked with the Tanishq / Titan Co. Ltd. from October 2008 to 30.06.2017.

13. On the other hand, the management has taken the plea that the workman joined the management company w.e.f. 01.04.2015 as Floor Manager. Prior to 01.04.2015 the workman was not in the direct employment of the management company but was working as an outsourced employee. M/s Manpower Group had appointed the workman on its rolls on 24.05.2014 vide appointment letter dated 23.05.2014 and vide letter dated 09.02.2015 M/s manpower relieved the workman from its service w.e.f. 31.03.2015 and employment of the workman with management started w.e.f. 01.04.2015.

14. The aforesaid plea of the management stands proved from the cross-examination of the workman / AW1 wherein she has stated that she is an educated person. She is Graduate from Panjab University in the year 2005. She can recognise her signatures on any document that she is shown. AW1 state that she has seen Exhibit 'MX1' and the same bear her signature at mark 'A'. From the aforesaid admission of the workman, it is proved that she was appointed vide appointment letter dated 23.05.2014 by the Manpower Group Services India Pvt. Ltd. In the cross-examination AW1 further state that she only worked for Titan during the period 2008 till 2017. Exhibit 'MX1' shown to the witness, who is already admitted her signatures on Mark 'A' but as regards the issuance of document she cannot say if it is issued by M/s Manpower Group. The version of AW1 that she cannot say if Exhibit 'MX1' was issued by Manpower Group Services is not a specific denial of the fact that appointment letter dated 23.05.2014 Exhibit 'MX1' is issued by the Manpower group, thus the fact being not specifically denied is deemed to be admitted. Moreover, Exhibit 'MX1' admittedly bears the signatures of the workman as Mark 'A'. It is not believable that an educated person had signed the documents without knowing the contents thereof. From Exhibit 'MX8' it is further proved that M/s Manpower Group relieved the workman from service w.e.f. 31.03.2015.

15. AW1 in her cross-examination stated that she was never issued any appointment letter during her employment with the management. The aforesaid plea of the workman stands falsified from the documents Exhibit 'MX9', which is copy of appointment letter dated 01.04.2015 issued to Sapna by Titan Company Ltd. vide which Sapna was appointed as Floor Manger by Titan Company Limited. In self-appraisal reports Exhibit 'MX2', Exhibit 'MX4' and Exhibit 'MX6' the workman has mentioned her date of joining (DOJ) as 01.04.2015. The appointment letter dated 01.04.2015 contains certain terms & conditions, out of which few are mentioned below :—

"You will be on probation for one year with effect from 01st April 2015. On completion of the probation period, if your work, conduct and attendance are found satisfactory, you will be confirmed in the service of the company by a specific letter of confirmation. However, if no such letter is issued, your services will be stand terminate automatically. Your service is terminable by one month's notice on either side without assigning any reason."

16. In the present case, the workman has pleaded that during her first pregnancy on 30.06.2016, she was thrown out of job by the management. She gave birth to first child on 29.08.2016. She again joined duty on 08.02.2017. She has not given any salary, leave, bonus etc. when she was thrown out of service w.e.f. 30.06.2016 to 08.02.2017. During her second pregnancy, (her second child born on 15.12.2017) she was harassed by the management and her job was terminated on 30.06.2017 without payment of any salary or compensation / maternity benefits or bonus benefits etc.

17. The plea of the workman, she was not given any maternity benefit of her first pregnancy stands falsified from her own version during cross-examination. In cross-examination AW1 stated that she also moved a complaint to Labour Inspector, who has office in Sector 30, Chandigarh, regarding demand of maternity benefits to her. Sh. Abhishek Sethi has appeared on behalf of the management before said authority. AW1 admitted as correct that she has admitted before the said authority that she was given her due maternity benefits during her first pregnancy.

18. Exhibit 'MX6' is the self-appraisal dated 09.06.2007 of the workman Sapna where in the column No.2 of Para - IV under the head - How do you feel about the result you have achieved during this year (achievements as well as short falls) the Ratee / Sapna has mentioned at Mark 'G' that she was on six months maternity leave.

19. In cross-examination AW1 state that she recognise her signature on Exhibit 'MX6' at Mark 'F' and recognise her writing at Mark 'G' which reads as 'I was on six months maternity leave". This fact supports the plea of the management that the workman was allowed to proceed on maternity leave w.e.f. 04.08.2016 to 05.02.2017.

20. As far as period of second pregnancy is concerned, AW1 in the cross-examination state that it dawned on her in the month of April 2019 that she was pregnant 2nd time. As per birth certificate Exhibit 'W2', 2nd child to Sapna was born on 15.12.2017.

21. As per appointment letter dated 01.04.2015 Exhibit 'MX9', probation period was for one year w.e.f 01.04.2015. During service in the management, the workman has filed her self-appraisal report dated 11.03.2016 Exhibit 'MX2', self-appraisal report dated 08.06.2016 Exhibit 'MX4', self-appraisal report dated 12.06.2016 Exhibit 'MX6'. The plea of the management is that during probation the work performed by the workman was not satisfactory. In this regard the workman in her self-appraisal report Exhibit 'MX2' at Mark 'B' stated as under :—

"3. Specify area in your performance which require improvement through your own efforts. What are your plan ?

Management :- My improvement area is management sometime. I won't be able to manage the team as I'm aware about all the SOP and Procedures. Due to my this weak area some time I feel under pressure and distressed. My performance is also affected due to lack of confidence.

Plan:- In coming days I am planning to join the classes of management and personality development classes.

4. What would you like the organisation to do to help you improve your performance on the current job ?

1. Organise performance development training time to time to flourish the performance.

2. Counselling should be mandatory where individual share his / her views about job."

22. Vide letter dated 17.03.2016 the probation period was extended up to 30.06.2016.

23. In self-appraisal report Exhibit 'MX4' at Mark 'D' the workman stated as under :—

"3. Specify areas in your performance which require improvement through your own efforts. What are your plans ?

First my improvement area is people management, (2) leadership and last motivation to staff. I understand the importance and values of these 3 of areas in my job profile. Gradually I have started working on my improvement areas. I am the only one who improve my weak areas by continuously working towards them. I have starting reading motivation blogs, administration activities, participation in max. store activities. Started taking meeting with staff with full confidence and giving motivation.

4. What would you like the organisation to do to help you improve your performance on the current job ?

Timely review of performance.

Feedback on store activities and problems if any related to job. Organised motivational and administrative programme for growth in our job."

24. Vide letter dated 30.06.2016 / Exhibit 'MX5' probation period of the workman was extended for 31.12.2016.

25. In Self-appraisal report dated 09.06.2017 / Exhibit 'MX6' at Mark 'G' the workman stated as under :—

"I was on six months maternity leave."

26. Vide letter dated 23.06.2017 termination order services ended with immediate effect. The extension of probation letter dated 17.03.2016. Exhibit 'MX3' bears signature of the workman Mark 'C'. The extension of probation letter dated 30.06.2006 / Exhibit 'MX5' bears signature of the workman at Mark 'E'. In cross-examination AW1 state that she recognise her writing on Exhibit 'MX2' and identify her signatures at Mark 'B'. She recognise her signatures on Exhibit 'MX3' at Mark 'C'. She recognise her writing on Exhibit 'MX4' at Mark 'D'. She recognise her signature on Exhibit 'MX5' at Mark 'E'. She recognise her signature on Exhibit 'MX6' at Mark 'F'.

27. From the aforesaid version of AW1, it is proved that the workman has admittedly in her self-appraisal report mentioned her weakness, which required improvement in her work, which justify the extension of probation and extension of probation is proved to be duly communicated to the workman. Thus, the extension of period of probation has nothing to do with the 2nd pregnancy. As per the terms & conditions of appointment letter Exhibit 'MX9', the services are terminable by one month notice on either side without assigning any reason. In the present case, it is duly proved that the management has paid to the workman the wages for one month notice period and leave encashment to the workman. Payment of ₹ 77,408/- towards one month notice pay and leave encashment through bank transaction is admitted by the workman. In cross-examination AW1 state that it is correct that ₹ 77,408/- was credited in her account via online transfer in her account No.036201518566 maintained with ICICI Bank with its Manimajra Branch.

28. Undisputedly, the services of the workman were terminated by the management by issuing letter dated 23.06.2017. None of the parties tendered into evidence the termination letter dated 23.06.2017. However, the copy of the same has been placed on record by the management along with the written statement. As per the termination letter dated 23.06.2017 the nature of termination of the services of the workman is of probationary dismissal. In view of the Mark 'B' forming part of self-appraisal report Exhibit 'MX2', Mark 'D' forming part of self-appraisal report Exhibit 'MX4', Mark 'G' forming part of self-appraisal report Exhibit 'MX6', read with the terms & conditions of appointment letter Exhibit 'MX9', the termination of the workman during her probation period, on account of non-improvement in performance of her official duties, is legal and justified. No violation is committed by the management of any of the terms & conditions incorporated in the appointment letter Exhibit 'MX9'.

29. Accordingly, this issue is decided against the workman and in favour of the management.

Issue No. 2 :

30. Onus to prove this issue is on the management.

31. Learned representative for the management argued that Ms. Sapna is not covered under the definition of 'workman' as defined under Section 2(s) of the ID Act. She was performing the duties of Floor Manager and her job profile includes monitoring, motivate the sales staff / sales executives. She was also In-charge of maintaining the discipline in the store, taking stock management / inventory management and reviewing customer's experience. She was earning more than ₹ 10,000/- per month.

32. On the other hand, learned representative for the workman has argued that the workman was doing the work as a Salesman, billing Clerk and helping in the sale-purchase and never performed any supervisory or managerial duties. She was not competent to control the business of the management nor competent to take disciplinary action against any employee. Main duties of the workman were purely manual i.e. maintaining of customer data, old customer calling to purchasing new/old ornaments / jewellery, Mangle Sutra, Chains, Sets Ear, Dealing customer, attend, stock counting, Gold / Diamond, preparation of billing, Cash receipt, care-taker etc. and operational in nature.

33. As per self-appraisal report dated 11.03.2016 Exhibit 'MX2' at Mark 'B' description of job of Ms. Sapna is as under :—

"My job is to drive GHS and Sales of the store. Achieving the store Targets MTD / YTD (GHS & Sales) Customer satisfaction, maintain & checking customer data. Customer feed back analysis, feed backs, delight stories, BTL activities Training - LMS / Productions / All trainings, Induction, Counseling & give feedback. Maintain Grooming & discipline in store, Cooperation and maintaining floor environment. TWOL audits and maintain store, Team Retailing Performance."

34. In cross-examination AW1 Sapna stated that she recognize her writing on Exhibit 'MX2' and identify her signatures at Mark 'B'.

35. The aforesaid nature of duties described by the workman herself in her self-appraisal report referred above, duly proves that she was performing managerial and supervisory duties, which falls within the exception to Section 2(s) of the ID Act. Therefore, the claimant-workman is not a 'workman' under Section 2(s) of the ID Act.

36. Accordingly, this issue is decided in favour of the management and against the workman.

Relief :

37. In the view of foregoing finding on the issues above, the industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 13th September, 2022.

(Sd.). . .,

(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory Chandigarh.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 27th October, 2022

No. 13/1/9393-HII(2)-2022/15938.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR (PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 67/2017 dated 05.09.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

PRESIDENT GENERAL SECRETARY, CHANDIGARH TRANSPORT UNDERTAKING WORKERS' UNION, REGD. NO.415, CHANDIGARH C/O SHRI D. R. KAITH, CHAMBER NO.104, DISTRICT COURT, SECTOR 43, UNION TERRITORY, CHANDIGARH (Worker's Union)

AND

THE DIVISIONAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING, CHANDIGARH AND DIRECTOR TRANSPORT, UNION TERRITORY CHANDIGARH (Management)

referred to the said court by the Chandigarh Administration bearing Endorsement No. 13/1/9393-HII(2)-2017/8450, dated 23.08.2017.

AWARD

1. *Vide* Endorsement No.13/1/9393-HII(2)-2017/8450 Dated 22.08.2017 / 23.08.2017 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court / Tribunal on the demand notice dated 23.06.2016 in respect of Shri Bharat - Conductor No.734, CTU, Chandigarh (*hereinafter in short referred as "workman"*) raised by the President / General Secretary C.T.U. Worker's Union (*hereinafter in short referred as "workers' union"*) upon the Divisional Manager, Chandigarh Transport Undertaking, Chandigarh and Director Transport, U.T. Chandigarh (*hereinafter in short referred as "management"*) under Section 2(k) of the Industrial Disputes Act, 1947 (*hereinafter in short referred as "ID Act"*) in following words:—

"Whether the demand raised in the demand notice dated 23.06.2016 by The President/General Secretary, Chandigarh Transport Undertaking Workers' Union, Regd. No.415, Chandigarh C/o Sh. D.R. Kaith, Chamber No. 104, District Court, Sector 43, Union Territory, Chandigarh And (1) The Divisional Manager, Chandigarh Transport Undertaking, Chandigarh and Director Transport, Union Territory, Chandigarh, are genuine and justified. If so, to what effect and to what relief the Union/Workers are entitled to, if any ?"

2. Upon notice, the workers' union appeared through its representative Shri Amit Kaith, who on 18.10.2017 made the statement that the demand notice dated 23.06.2016 may be treated as statement of claim. Accordingly, the demand notice dated was ordered to be treated as statement of claim. Briefly stated the facts of statement of claim are that a meeting of C.T.U Workers Union (Regd.) was held on 23.06.2016 and it was unanimously resolved that injustice has been done with Shri Bharat -Conductor No. 734, CTU, Chandigarh at the hands of the management. The illegal order of punishment dated 08.01.2014 / 21.02.2014 was passed whereby one increment of workman was stopped without cumulative effect and further pay of suspension period w.e.f. 09.01.2001 to 16.03.2011 was limited to the grant of subsistence allowance already paid to the workman. Further the workman has been denied the ACP Scale on completion of 4, 9, 14 service for which he was legally entitled, therefore, union has decided to file demand notice on his behalf for demanding justice to him. The workers' union has further authorized President and Secretary of the union to sign the necessary pleadings including demand notice and to engage the services of authorized representatives to appear and

represent the case on behalf of the workers' union before the Assistant Labour Commissioner, UT, Chandigarh. as well as before the Presiding Officer, Labour court, UT, Chandigarh.

3. The workman joined his services as Conductor on 12.01.1999 on regular basis and has now completed more than 16 years of service. The workman was charge sheeted as per charge sheet dated 14.03.2001 on the allegations that while checking his bus on 07.02.2001 it was found that 9 passengers were alighting without tickets who had paid ₹ 5/- each, therefore, he had embezzlement a sum of ₹ 45/-. The workman replied to the charge sheet and denied the allegations. Thereafter no further proceedings took place. Since no further proceedings were taken on charge sheet dated 14.03.2001, therefore, workman made a representation to the department for grant of ACP Scales on completion of 4, 9, 14 years of service as he was fully entitled for the same but was being withheld illegally due to the charge sheet dated 14.03.2001, as conveyed to the workman by the department as per letter dated 9.10.2012, 22.02.2013 and 02.04.2013. In response to the letter dated 02.04.2013 the workman made a representation dated 11.04.2013 pleading that no inquiry is pending against him and departmental proceedings have been filed, therefore, ACP Scales may kindly be granted to him. Thereafter instead of granting ACP Scales to him the department passed an order dated 08.01.2014 / 21.02.2014 whereby one increment of workman was stopped without cumulative effect and further pay of suspension period above the substance allowance denied to him. Order of punishment dated 08.01.2014 / 21.02.2014 is illegal and in violation of law of natural justice. No departmental proceedings took place and workman was never called for appearance before any inquiry officer in connection with the departmental inquiry. The workman never made any confession as alleged in the punishment order dated 08.01.2014 / 21.02.2014. Even otherwise denial of pay of suspension above subsistence allowance is illegal. Workman was given only minor punishment and it is settled law that pay of suspension period cannot be denied if only minor punishment is imposed. Further, no notice under Rule 7.3 of Punjab Civil Services Rule Vol. - I was given before denial of pay of suspension period. The State of Punjab framed a ACP Scheme dated 03.11.2006 in which it was provided that an employee who have completed 4, 9, 14 years of service and have not got any promotion during this period shall be granted ACP Scale on completion of 4, 9, 14 years of service. These instructions were also adopted by UT, Administration and have granted the benefits of ACP Scales to its employees. The workman joined his service on 12.01.1999 and has completed more than 16 years of service. Till date he has not got any promotion and promotional pay scale, therefore, he is fully entitled for ACP Scale on completion of 4, 9, 14 years of service. Service record of workman is satisfactory because nothing adverse was conveyed to him. Further it is also settled law that if employee is given minor punishment in that case promotion and ACP Scales cannot be denied to him due to order of minor punishment. The workman has made several requests to withdraw the illegal order of punishment dated 08.01.2014 / 21.02.2014 and to grant the ACP Scales on completion of 4, 9, 14 years of service, but all in vain, hence the present demand notice. Prayer is made that illegal order of punishment dated 08.01.2014 / 21.02.2014 and to release all the monetary benefits withheld by virtue of this illegal order along with interest and further to grant of the 1st ACP Scales on completion of 4 years w.e.f 13.01.2003 (incorrectly written as 13.01.2013 in claim statement due to clerical mistake), 2nd ACP on completion of 9 years of service w.e.f. 13.01.2008 and 3rd ACP Scales 13.01.2013 and to pay the difference of pay interest @12% P.A. within 15 days from receipt of this demand notice.

4. On notice, the management appeared through its Law Officer and contested the claim of the workers' union by filing written statement on 13.03.2018, wherein preliminary objections are raised on the ground that the present statement of claim is liable to be dismissed on the ground that the same has been filed on the highly belated stage and the workman has approached before this Court with unclean hands and has concealed the material facts from this Court. The workman has a blemished record during the span of his services whereby he was charge-sheeted a number of times and awarded number of punishments during the period of his services. The workman's claim for ACP does not come under the instructions of ACP issued by the Chandigarh Administration. Thus, the workman is not entitled to get the benefit of ACP due to pendency of departmental proceedings and bad service record. The benefit of ACP was not granted to the workman as some departmental proceedings were pending against him which resulted into punishments and there are clear cut instructions with regard to the ACP that all the rules of promotion are also applicable for the benefit of ACP.

It is a well settled law that when any departmental proceeding is pending against a workman then in that case neither he is entitled to get promotion nor the benefit of ACP. The present statement of claim is not maintainable and liable to be dismissed on the ground that the workman has not preferred any appeal against the impugned order dated 08.01.2014 before the Appellate Authority, whereas according to the provisions of Punjab Civil Services (Punishment and Appeal) Rules it is stipulated that an official/govt. employees may prefer an appeal against the punishment order awarded against him before the Appellate Authority within 45 days from the date of punishment.

5. On merits, it is stated that fact regarding meeting of the union is not disputed. The workman was charge-sheeted for misappropriation of ₹ 45/- and he was placed under suspension *vide* the office order No. 92/DT/CTU/2001 dated 09.02.2001 and reinstated *vide* the office order No. 179/DT/CTU/2001 dated 16.03.2001. The official record with regard to the afore-stated fraud case of ₹ 45/- against the workman was misplaced yet there is a copy of finding of the Inquiry Officer dated 27.07.2002 whereby it is clear that the workman had tendered his confession in that case and requested to the Inquiry Officer for not pursuing his departmental inquiry and to take a lenient view against him, hence the charge sheet *vide* Memo No.4407/DT/TA-I/CTU/01 dated 14.03.2001 stood proved against the workman. Not only this, the finding of the enquiry officer was supplied to the workman *vide* the Memo No.3074/ECC/CTU-II/2013 dated 03.12.2013 for making representation, if any, against finding of the Inquiry Officer. The workman submitted a representation against the finding of the Inquiry Officer by playing a smart game whereby he demanded the copy of confession given by him during the departmental proceedings as he was well aware about misplacing of the officials record with regard to his departmental enquiry. But the Competent Authority has duly considered the representation submitted by the workman and the workman was called for the personal hearing to decide the matter whereby the workman appeared before the punishing authority and when he was confronted with the material facts on record and the charges leveled against him, he assured that he will not repeat such mistake in future and perform his duty diligently and honestly, which amounts to admission of his charges. Further he had also requested to take a lenient view against him. Hence, the punishment order dated 08.01.2014 bearing endorsement No. 598/ECC/CTU-II/2014 dated 21.02.2014. The workman submitted a request for granting of proficiency step up and ACP. From the official record, it was clear that the departmental proceedings were pending and the same had not been culminated that is why the benefit of ACP was not extended to the workman as per instructions issued from the Chandigarh Administration. The official record of the workman revealed that he was charge-sheeted for misappropriation of ₹ 45/- and the charges stood proved against him as per findings of the Inquiry Officer and on consideration of the whole record of the case, the competent authority awarded a punishment of stoppage of one increment without cumulative effect and his suspension period w.e.f. 09.02.2001 to 16.03.2001 was ordered to be limited to the grant of subsistence allowance only *vide* order dated 08.01.2014. The impugned order is well justified, reasoned and speaking as well, which has been passed after adopting the due procedure of law and after considering the facts and record of the case. The contents of the findings of the Inquiry Officer are very clear which show that the workman had appeared before the Inquiry Officer during the departmental inquiry and he had tendered his confession by admitting his fault hence, the charges stood proved. The benefits of ACP of the workman were rightly rejected as the departmental proceedings were pending against the workman and the same have not been conducted. Remaining averments of statement of claim are denied being wrong. Prayer is made that the statement of claim may be dismissed with cost being devoid of merit.

6. Replication not intended to be filed. From the pleadings of the parties, following issues were framed *vide* order dated 23.04.2018 :—

1. Whether the demand raised in the demand notice dated 23.06.2016 by the workers' union is genuine and justified, if so, to what effect and to what relief workers' union/worker is entitled to, if any ? OPW
2. Whether the claim of the workers' union is bad on account of delay & latches ? OPM
3. Relief.

7. In evidence, the workers' union examined the workman Bharat as AW1, who tendered the affidavit Exhibit 'AW1/A' along with documents i.e. Memo No.10074/ECC/CTU-II/2012 dated 09.10.2012 issued by the General Manager, Chandigarh Transport Undertaking, Chandigarh to Shri Bharat - Conductor No.734, Chandigarh Transport Undertaking - II, Chandigarh whereby Shri Bharat was informed that he was placed under suspension *vide* office order No.92/DT/CTU/2001 dated 09.02.2001 and in view of the pendency of the departmental inquiry, the proficiency step up increment case cannot be granted till its finalisation Exhibit 'W1'; copy of letter No.896/ECC/CTU-II/2013 dated 02.04.2013 issued by the General Manager, Chandigarh Transport Undertaking, Chandigarh to Bharat that he has already been informed by the office that he was placed under suspension and a departmental inquiry is pending against him so he is not eligible for grant of ACP benefit Exhibit 'W2'; copy of office order dated 08.01.2014 bearing Endorsement No.598/ECC/CTU-II/14 dated 21.02.2014 whereby after concluding the department inquiry Bharat was imposed with punishment to stoppage of his one increment without cumulative effect and suspension period w.e.f. 09.02.2001, 16.03.2001 be limited to grant of subsistence allowance only Exhibit 'W3'; copy of instructions of Punjab Government, Department of Personnel dated 03.11.2006 relating to the subject of Assured Career Progression scheme on completion on 4, 9 and 14 years of service in a cadre *vide* Exhibit 'W4'. On 27.09.2021 learned representative for the workers' union closed the evidence on behalf of the workers' union.

8. On the other hand, the management examined MW1 Sulochana Rani - Senior Assistant of CTU, Office of the Director Transport & Divisional Manager, U.T. Chandigarh, who tendered her affidavit Exhibit 'MW1/A' along with documents i.e. history sheet relating to Bharat - Conductor No.734 Exhibit 'MW1/1' and copy of the Punjab Civil Services Rules, Volume I (Part I) relating to Assured Career Progression scheme *vide* Exhibit 'MW1/2'. On 30.08.2022 learned Law Officer for the management closed the evidence.

9. I have heard the arguments of learned representative for the workers' union and learned Law Officer for the management and perused the judicial file. My issue-wise finding are as below:-

Issue No. 1 :

10. Onus to prove this issue is on the workers' union.

11. In the present reference, the workers' union is seeking two relief i.e. i) withdrawal of punishment order dated 08.01.2014 / 21.02.2014 relating to Bharat - Conductor No.734 on the ground that the same is illegal and ii) seeking grant of 1st ACP on completion of 4 years of service, 2nd ACP on completion of 9 years of service and 3rd ACP on completion of 14 years of service.

12. As far as the first relief with regard to punishment order dated 08.01.2014 / 21.02.2014 is concerned, in this regard learned representative for the workers' union on 08.05.2019 got recorded statement to the effect that in the present reference union do not want to press the relief of departmental inquiry and only press for the ACP scale. Consequently the relief qua punishment order is declined being not pressed.

13. Learned representative for the workers' union has taken plea that the workman joined the services on 12.01.1999. His first ACP was due on 13.01.2003 and 2nd ACP was due on 13.01.2008 and 3rd ACP was due on 13.01.2013 and out of these the workman has not been given any ACP. 1st ACP was granted to the workman w.e.f. 07.09.2017. To support his contention learned representative for the workers' union has referred to cross-examination of MW1 Sulochna Rani wherein she stated that as per rules the workman was entitled for ACP in the year 2003, 2008 and 2013 but the same was not granted to the workman due to departmental inquiry and punishment order against the workman and 1st ACP was granted to the workman on 07.09.2017. Learned representative for the workers' union laid much stress on the fact that there are no adverse remarks in the ACR of the workman. Under the rules, adverse remarks are required to be communicated to the workman so he may seek remedy against the same by moving representation. Adverse remarks not conveyed are deemed to be good. In this case, the adverse remarks prior to 2017 are never conveyed to the workman. To support his contention, learned representative for the workers' union has MW1 wherein she has stated that as per record no ACR was ever conveyed to the concerned workman.

14. Admittedly the employees of CTU are governed by the Punjab Civil Services (Punishment and Appeal) Rules.

15. In the present case workman Bharat joined service as Conductor on regular basis in CTU on 12.01.1999 (the management in written statement alleged the date of joining of Bharat as 01.12.1999). AW1 in his cross-examination conducted by the management stated that he joined the management on 12.01.1999 as Conductor. The aforesaid version of the AW1 is not contradicted by the management. None of the parties brought into evidence the appointment letter of the workman Bharat. In the claim statement workman Bharat is seeking grant of 1st ACP on completion of 4 years of service, 2nd ACP on completion of 9 years of service and 3rd ACP on completion of 14 years of service.

16. The claim of the workman Bharat is confined to the grant of ACPs. Keeping in view the date of joining service i.e. 01.12.1999, the 1st ACP on completion of 4 years of service becomes due on 12.01.2003, 2nd ACP on completion of 9 years of service becomes due on 12.01.2008 and 3rd ACP on completion of 14 years of service becomes due on 12.01.2013. Admittedly the workman Bharat was not granted 1st, 2nd and 3rd ACP on the above said due dates. MW1 Sulochna Rani in her cross-examination has stated that 1st ACP was granted to the workman Bharat on 07.09.2017. Learned representative for the workers' union argued that as per the instructions dated 03.11.2006 issued by the State of Punjab / Exhibit 'W4', adopted by U.T. Administration, ACP scheme was framed in which it was provided that an employees who have completed 4, 9, 14 years of service in the same cadre and have not got any promotion during this period shall be granted ACP on completion of 4, 9, 14 years of service. The workman Bharat who joined service on 12.01.1999 has completed more than 16 years of service. Till date he has not been granted any promotion and promotional pay scale, therefore, the workman Bharat is entitled for ACP scales on completion of 4, 9, 14 years of service. The service record of the workman is satisfactory because no adverse remarks were ever conveyed to him. Further, it is a settled law that if an employee is given minor punishment, in that case ACP scales cannot be denied to him due to order of minor punishment. The workman made several requests to grant ACP scales on completion of 4, 9, 14 years of service but to no effect.

17. On the other hand, learned Law Officer for the management contended that the workman Bharat's claim for ACP does not come under the instructions of ACP issued by the Chandigarh Administration. The benefit of ACP was not granted to the workman because some departmental proceedings were pending against him, which resulted into punishment and the workman has bad service record. As per the clear cut instructions with regard to the ACP, all the rules of promotion are applicable for the benefit of ACP. It is well settled law that when any departmental proceeding is pending against a workman, then in that case neither he is entitled to promotion nor to the benefit of ACP.

18. As per the history sheet / Exhibit 'MW1/1' of workman Bharat, Conductor No. 734, he was placed under suspension *vide* office order No.925 dated 09.11.2000 and reinstated with immediate effect *vide* office order No.983 dated 06.12.2000 against pending inquiry. *Vide* office order No. 683 dated 07.08.2021 his one increment was stopped without cumulative effect and the suspension period was limited to the grant of subsistence allowance only. He was placed under suspension *vide* office order No. 92 dated 09.02.2001 and reinstated with immediate effect *vide* office order No. 179 dated 16.03.2001 without prejudice to the departmental inquiry pending against him. *Vide* order dated 08.01.2014, conveyed *vide* endorsement No. 598 dated 21.02.2014, his one increment was stopped without cumulative effect and his suspension period w.e.f. 09.02.2001 to 16.03.2001 was limited to the grant of subsistence allowance only. *Vide* office order No. 733 dated 23.08.2001, for his absence period w.e.f. 17.06.2001 to 27.07.2001, he was treated without leave. *Vide* office order No. 1071 dated 13.12.2001, his one increment was stopped without cumulative effect. He was placed under suspension *vide* office order No. 327 dated 06.10.2004 and reinstated with immediate effect *vide* office order No. Nil dated 25.01.2005 without prejudice to the departmental inquiry pending against him. *Vide* office order No. 1203 dated 08.08.2006, it was ordered to reduce the pay to the minimum of time scale for a period of 5 years and he will not earn increment of pay during the period of reduction and on expiry of this period the reduction will have the effect of postponing his future increment of pay and his suspension period w.e.f. 06.10.2004 to 24.01.2005 be limited to the subsistence allowance only. *Vide* office order No. 99 dated 01.05.2006, he was placed under suspension and *vide* office order No. 120 dated 31.05.2006, he was

reinstated with immediate effect without prejudice to the department inquiry pending against him. *Vide* office order endorsement No. 2873 dated 27.10.2009, he was issued censure and his suspension period w.e.f 01.05.2006 to 30.05.2006 was limited. Further, the order of time scale for a period of 5 years converted the punishment into stoppage of 5 increments without cumulative effect. *Vide* order dated 19.10.2009 conveyed *vide* endorsement No. 3174 dated 19.11.2009, it was ordered that if he is further found to be undergoing into any irregularity within a period of 1 year, the above relief granted to him will be withdrawn immediately. *Vide* order endorsement No. 2189 dated 20.10.2009, he was warned to be more careful in future. *Vide* order endorsement No. 4994 dated 04.04.2010, he was warned to be more careful in future. *Vide* order endorsement No. 1157 dated 18.07.2011, he was warned to be more careful in future. *Vide* office order No. 3990 dated 09.09.2015, he was issued censure. *Vide* office order No. 5408 dated 09.10.2015, he was issued censure.

19. AW1 Bharat when put to cross-examination stated that he joined the management on 12.01.1999 as Conductor. AW1 admitted as correct that a departmental inquiry was conducted against him for misappropriation of ₹ 45/-. He does not remember that he had given his confessional statement before the Inquiry Officer. He does not remember that he had been supplied with the copy of the inquiry report for making representation. He does not remember that he had given the representation against the inquiry report wherein he demanded the copy of confessional statement given by him. He does not know whether the official record of the departmental inquiry was misplaced. AW1 admitted as correct that before passing the punishment order, he was afforded the opportunity of personal hearing by the punishing authority. In the personal hearing, he was confronted with the material facts on record and assured that he will not repeat such mistake in future. He does not remember when his inquiry was concluded. He does not know whether any departmental proceedings were pending and the same have not been completed till 2014. AW1 admitted as correct that the competent authority awarded the punishment of stoppage of one increment without cumulative effect and his suspension period with effect from 09.02.2001 to 16.03.2001 was ordered to be limited to grant of subsistence allowance only. He did not file the appeal against the punishment order dated 08.01.2014. AW1 admitted as correct that he was also suspended *vide* order dated 19.11.2000 for misappropriation of ₹ 24/- and in this case also awarded the punishment of stoppage of one increment without cumulative effect. Volunteered, he filed the appeal before the appellate authority, which is still pending. He does not know the next date of hearing. AW1 admitted as correct that he was also awarded the punishment of stoppage of one increment with cumulative effect *vide* order dated 08.08.2006 for fraud of ₹ 27/-. He has not filed any appeal before the appellate authority against order dated 08.08.2006. He does not remember whether he was ordered to censure the services *vide* order dated 09.09.2015. He does not remember whether recovery order of ₹ 2000/- and censure of service was ordered passed against him *vide* order dated 09.10.2015. He does not know whether he has been provided ACP for four and nine year service.

20. From the aforesaid version of AW1, it is proved that he has admitted the contents of his history sheet Exhibit 'MW1/1'. The fact which is not specifically denied by AW1 in his cross-examination is deemed to be admitted under the law.

21. MW1 Sulochana Rani, Senior Assistant office of Director Transport & Divisional Manager, Chandigarh when put to cross-examination stated that she has brought the record ACR of workman Bharat of his entire service. As per the record no ACR was ever conveyed to the concerned workman, voluntarily stated that from year 2017 onwards all the ACRs were uploaded online. Again said the ACR for the year 2000-2001 was below average, ACR for the year 2001-2002 was average, ACR for the year 2002-2003 was average, ACR for the year 2004-2005 was average, thus these were conveyed to the workman. As per record the ACR for the year 2000-2001 was duly received by him. The ACR for the year 2015-2016 was below average but it was conveyed to the workman. MW1 denied as wrong that the ACRs for the year 2002-2003 and 2004-2005 were never conveyed to the workman. For the purpose of grant of ACP, the ACRs for the previous period of 5 years are considered. Again said she is not sure about that. She does not know how many ACRs are required to be good from the previous period of 5 years for the purpose of grant of ACP. She does not know if 50% of the ACRs are required to be good for the purpose of grant of ACP. The workman was granted first ACP scale at the completion of 4 years of service w.e.f. 07.09.2017 and at that time the service of the workman was more than 17 years. The increments of the workman were stopped, therefore, he was not granted second and third ACP. The workman remained suspended for the period from 09.11.2000 to 05.12.2000

and during this period his one increment was stopped without cumulative effect *vide* order dated 07.08.2001. Again workman remained suspended for the period from 09.02.2001 to 16.03.2001 and his case for suspension of the said period was decided *vide* order dated 21.02.2014 whereby his one increment was stopped without cumulative effect and suspension period was limited to the subsistence allowance. The workman remained on without pay leave for the absence period from 17.06.2001 to 27.07.2001 and the case was decided *vide* order dated 23.08.2001 whereby the leave period was considered without pay. Again *vide* order dated 13.12.2001 one increment of the workman was stopped without cumulative effect as he was found without first aid box. Again workman was suspended from 15.04.2002 to 17.05.2002, the case was decided *vide* order dated 08.08.2006 whereby one increment was stopped without cumulative effect and suspension period was limited to the subsistence allowance. Again *vide* order dated 29.10.2002, the probation period of workman was extended for one year. Thereafter, the workman was issued censure 9 times on the allegation of fraud of ₹ 6/-, ₹ 10/-, ₹ 16/-, ₹ 15/-, ₹ 8/-, ₹ 12/-, ₹ 6/-, ₹ 12/-, ₹ 15/- respectively *vide* different orders dated 29.01.2003, 21.02.2003, 19.05.2003, 19.05.2003, 19.05.2003, 02.05.2003, 02.05.2003, 24.07.2003 and 24.07.2003. Again one increment of the workman was stopped without cumulative effect *vide* order dated 18.08.2003 on the allegation of fraud of ₹ 12/-. Again one increment of the workman was stopped without cumulative effect *vide* order dated 18.08.2003 on the allegation of fraud of ₹ 6/-. Again *vide* order dated 24.06.2004, warning was issued to the workman on the allegation of fraud of ₹ 6/-. Again workman remained suspended from 06.10.2004 to 25.01.2005 on the allegation of fraud of ₹ 198/- and his case was decided *vide* order dated 08.08.2006 whereby punishment of order of time scale for the period of 5 years was passed later on converted *vide* order dated 19.11.2009 to stoppage of 5 increments without cumulative effect. Again *vide* order dated 27.10.2009, the punishment was imposed to effect recovery of ₹ 1000/- on the allegation of commission of fraud of ₹ 5/-. Again *vide* order dated 20.10.2009 and 04.04.2011 workman was issued warning twice on the allegation of commission of fraud of ₹ 10/- each. Again *vide* order dated 18.07.2011, the punishment was imposed to effect recovery of ₹ 1000/- on the allegation of fraud of ₹ 10/-. Again on 23.07.2015 show cause notice was issued to the workman and after inquiry punishment was imposed to effect recovery of ₹ 2000/- from the workman and simultaneously censure was issued. Again the workman was suspended for the period from 17.10.2021 to 02.11.2021, and his case was concluded *vide* order dated 09.03.2022 whereby it was ordered to recover 50 times fine with strict warning and suspension period was limited to grant of subsistence allowance. *Vide* orders dated 22.02.2013 and 02.04.2013, the representation of the workman to consider him for ACP were declined on the ground that departmental inquiry is pending against him. As per service book, the workman was given annual increment on 01.12.2000, 01.12.2012, 01.12.2013. MW1 denied as wrong that due to the punishment of censure, warning and minor punishment the ACP scales and promotion cannot be denied.

22. As per rule 4.8 of the Punjab Civil Services Rules, Volume-I (Part I) relating to Assured Career Progression Scheme, a Government employee is entitled to the benefit of fixation of pay under the Assured Career Progression Scheme by the Government from time to time subject to such terms and conditions, as may be specified :

Provided that grant of benefit of such Scheme, shall also be subject to the following general terms and conditions :—

- (a) A Government employee, who forgoes promotion offered to him, shall not be eligible for benefits under the Assured Career Progression Scheme; and
- (b) only the Service which counts for seniority and increments in a cadre against a post, shall be reckoned for the grant of benefit under the Assured Career Progression Scheme.

23. As per the instructions dated 03.11.2006 of Government of Punjab, Department of Personnel / Exhibit 'W4', adopted by the Chandigarh Administration, para 4 (b) the procedure for assessing the work and conduct for placement in the higher scale shall be the same as applicable to the case of promotion. The placement in higher scale shall be allowed only to those employees whose over all service record during the span of satisfactory service, is adjudged as Good and the employee is otherwise suitable for promotion.

"Good" record shall mean that more than 50% Annual Confidential Reports are good and out of last three years report at least two should be 'Good'. For all the remaining year the benchmark may be 'Average'. In the present case as proved on record the workman Bharat has blemished service record i.e. he remained under suspension for the period mentioned below :—

from 09.11.2000 to 05.12.2000,

from 09.02.2001 to 16.03.2001,

from 06.10.2004 to 24.01.2005,

from 01.05.2006 to 30.05.2006.

Thus, his total period of suspension comes to 9 months and 6 days.

24. The workman Bharat remained on without pay leave from 17.06.2001 to 27.07.2001. The probation period of workman Bharat was extended for 1 year vide order dated 29.10.2002. The workman Bharat was issued censure vide order dated 21.02.2003, 13.05.2003, 19.05.2003 again on 19.05.2003, 02.05.2003, 24.07.2003 and 09.09.2005. One increment was stopped without cumulative effect vide order dated 07.08.2001. One increment was stopped without cumulative effect vide order dated 13.12.2001. One increment was stopped without cumulative effect vide order dated 08.08.2006. One increment of workman Bharat was stopped without cumulative effect vide order dated 18.08.2003. Five increment was stopped without cumulative effect vide order dated 19.11.2009. One increment of workman Bharat was stopped without cumulative effect vide order dated 21.12.2014. In this manner, total 10 increments without cumulative effect were stopped and one year probation period was extended hence total 11 years were deferred. It is not the case of the workman that he was awarded punishments without holding departmental inquiry. Two of his ACRs for the year 2000-2001 and year 2015-2016 were below average. The workman Bharat has not challenged any departmental inquiry or any of his punishment order before any competent Appellate Authority. In view of the above mentioned punishment orders passed by the management after holding departmental inquiry, it cannot be assumed that the workman assumed his ACRs good or satisfactory on the ground that the adverse remarks were not communicated/conveyed to him. The workman Bharat does not fulfill the criteria of Para 4(b) of the Government instructions dated 03.11.2006 Exhibit 'W4'. So the demand raised in the demand notice dated 23.06.2016 by the workers' union is not genuine and justified.

25. Accordingly, this issue decided against the workers' union and in favour of the management.

Issue No. 2 :

26. Onus to prove this issue is on the management. Under this issue learned Law Officer for the management argued that the demand notice have been raised after a considerable delay, thus, the present claim statement is not maintainable. To my opinion, the denial of ACP is a recurring cause of action, thus the bar of limitation does not apply.

27. Accordingly, this issue is decided against the management and in favour of the worker' union.

Relief :-

28. In the view of foregoing finding on the issue No.1 above, the reference is declined and answered against the workers' union. Appropriate Government be informed. File be consigned to the record room.

The 5th September, 2022.

(Sd.). . .,

(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory Chandigarh.
UID No.PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 27th October, 2022

No. 13/1/9901-HII(2)-2022/15940.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 84/2017 dated 30.08.2022, delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

JOHNY VERMA S/O SHRI SATPAL VERMA, R/O HOUSE NO. 259/A, VPO SAKETRI,
DISTRICT PANCHKULA, HARYANA (Workman)

AND

GROZ BECKERT ASIA PVT. LTD, 133-135, INDUSTRIAL AREA PHASE-I, CHANDIGARH
THROUGH ITS FACTORY MANAGER (Management)

AWARD

1. Johny Verma (in the documents relating to the service of the workman, this name is spelled as Jonny Verma and in the copy of adhaar his name is spelled as Jonney Verma whereas in the statement of claim his name is spelled as Johny Verma but the applicant has signed his appointment letter with his named spelled as Jonney Verma), workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman joined the services with the company named as Groz Beckert Asia Pvt. Ltd. on 11.08.2007. During the service period, the workman worked with full dedication, devotion, honestly and sincerity for the advancement of the company. On 01.12.2016 the Factory Manager called the workman in the office and forced him to resign from the services or his services will be terminated. The workman refused to do so, upon which the management did not allow the workman to join his duties and asked him to come next day. On the next day also the management did not allow him to join his duty and again forced him to resign from the service. But, when the workman refused to sign, the Factory Manager asked him to go home and told him that now the workman need not to come. On 16.12.2016 the workman received a postal letter of disciplinary action from the company and shocked to find that the company had terminated his services in an illegal manner without giving any opportunity of hearing. Earlier also the management of the company under the signature of the Factory Manager issued show cause notice dated 11.04.2016 to which the workman submitted his reply dated 15.04.2016. Thereafter, the management issued charge sheet on 25.04.2016, to which the workman sought some time to reply *vide* letter dated 27.04.2016 as he was recovered from long illness. But the management did not afford reasonable time to the workman and the workman was forced to file his reply next day i.e. 28.04.2016. In the reply the workman categorically denied the allegations leveled against him. Thereafter, the very next day i.e. 29.04.2016 the management without applying mind on the reply of the workman issued him letter of domestic inquiry and appointed Mr. Bipin Sharma as an Inquiry Officer. On 03.05.2016 the domestic inquiry was started without giving any list of witnesses and documents to the workman. The workman through letter dated 06.05.2016 raised objection to the same and also raised his inability to face the inquiry in English language and requested the management to provide the Hindi version of the documents and to conduct the inquiry in Hindi language only. The management and the Inquiry Officer did not pay any heed to the requests and objections of the workman. The Inquiry Officer conducted the inquiry without following principles of natural justice and on completion of the inquiry submitted a biased report dated 04.08.2016. The workman had taken categorical stand that the present inquiry is being conducted to force his father to leave the job as the company wants to reduce the manpower and is forcing the other employees also to resign from the services under the garb of illegal schemes. The Inquiry Officer, from the whole inquiry proceedings, picks & choose the contents favourable to management and

concealed the contents favourable to the cause of the workman. The management of the company sought the comments from the workman on the said inquiry report and accordingly the workman submitted his comments, specifically objecting the way his inquiry was conducted i.e. without giving reasonable opportunity to the workman and without following the principles of natural justice. The management thereafter called the workman and his father in his office and asked his father either to resign from the services or the services of his son shall be terminated consequent to the inquiry. The Factory Manager further put the condition that if the father of the workman accepts to resign then the workman will not be terminated but will be suspended for 10-15 days. The workman and his father bend to the illegal condition of the Factory Manager but asked the management to first fulfill their promise. Subsequently in pre-determined manner the management issued an order of punishment *vide* letter dated 05.09.2016 and suspended the workman without pay for 15 days and the father of the workman relieved from his services *vide* order dated 24.10.2016 after taking a request for the same. Now the management again has victimized the workman and has terminated his services arbitrarily and illegally. The order of termination dated 01.12.2016 is illegal and not sustainable in the eyes of law and liable to be set aside on the following grounds :—

- a. The management of the company has not complied with the certified standing orders and dismissed the services of the workman without giving him opportunity of hearing and defying principles of natural justice.
- b. In the earlier inquiry the management of the company appointed Shri Bipin Kumar, Advocate as an Inquiry Officer in contravention of the certified standing orders. The management opted to appoint Inquiry Officer to such a person, who was able to give his report under the dictates of the management.
- c. Order of termination is in contravention of certified standing orders and also against the terms & conditions of the appointment letter dated 11.08.2007 of the workman.
- d. Order of termination is illegal as it fails to disclose as to why and under which rule the service of the workman has been terminated.
- e. The management of the company did not even bother to adhere the statutory provisions of the ID Act.
- f. The allegations of absence without permission in the order of disciplinary action are false and baseless. The workman could have rebutted the said allegations, if provided opportunity by the management but the management intentionally failed to do so.

The workman has submitted demand notice dated 21.12.2016 to the management and before the Assistant Labour Commissioner-cum-Conciliation Officer, Chandigarh and the management submitted its reply dated 11.02.2017. The Conciliation Officer initiated conciliation proceedings in the matter of the ID Act so raised by the workman but the conciliation proceedings failed and accordingly, the Conciliation Officer *vide* Memo No.782 dated 17.02.2017 advised the workman to refer Section 2-A of the Industrial Disputes (Amendment) Act, 2010 and accordingly this claim. Prayer is made that order of dismissal dated 01.12.2016 may be declared as illegal being in total violation of labour law and principles of natural justice and the workman may be ordered to be reinstated into service of the company with all the service benefits including full back wages and continuity of service from the date of his illegal termination in the interest of justice.

2. On notice, the management appeared through its authorized representative and contested the claim of the workman by filing written statement on 01.02.2018, wherein preliminary objections are raised on the ground that the services of the workman were dispensed with on account of his habitual and willful absenteeism. The workman was charge sheeted for the same. Inquiry was held and the workman was found guilty of habitual absenteeism by the Inquiry Officer. The workman was inflicted punishment of suspension without pay for fifteen days as per Certified Standing Orders of the company. Lenient punishment was imposed so that the workman would show improvement in future but the workman failed to show any positive response and

improvement in his attendance, rather he remained absent in an un-authorized manner for a period of 10.5 days during October and November, 2016. The management was, therefore, constrained to draw a final presumption that the workman became totally incorrigible and habitual absentee and consequently, the management lost confidence in the workman as an employee of the company. The misconduct committed by the workman is very serious in nature and such person cannot be imposed on the management as the management is export oriented unit and 60% of its production is exported to various countries like Japan, USA, Nepal, China, Bangladesh, Sri-Lanka and Germany. The industry of the management is extremely precision oriented, sophisticated and continuous line operation industry which cannot afford any absenteeism even for a day in the factory on the part of operative staff / workers. Therefore, in the interest of the company's work and in order to maintain discipline and decorum, the services of the workman were dispensed with *vide* order dated 01.12.2016.

3. On merits, it is stated that the workman joined the services of the company on 13.08.2007 and not on 11.08.2007. A letter dated 01.12.2016 was served upon the workman concerned by the then Deputy General manager - Human Resources & Admin in the presence of Shri Anil Kumar Mangal - Assistant Manager, Human Resources and Shri Ajay Kumar Patyal. The workman refused to accept the letter. Thereafter, letter dated 01.12.2016 *vide* which the services of the workman have been dispensed w.e.f. 01.12.2016, was sent under registered post at the address of the workman available with the company on 01.12.2016 itself. Show cause notice dated 11.04.2016 was issued to the workman concerned and reply dated 15.04.2016 was submitted by him. Thereafter, the workman was charge sheeted *vide* charge sheet dated 22.04.2016 received by the workman on 25.04.2016. The workman submitted an application to seek some more time to file reply to the charge sheet, which was acceded to and as agreed by the workman he was to file the reply by 28.04.2016. The workman gave his reply, which was found to be un-satisfactory and in order to meet the ends of justice, the domestic inquiry into the charge sheet was ordered to be conducted on 29.04.2016 and Shri Bipin Sharma was appointed as the Inquiry Officer. The workman was supplied list of witnesses and list of documents on the first effective date of the inquiry i.e. on 09.05.2016. The workman submitted a letter dated 09.05.2016 to the Inquiry Officer requesting the Inquiry Officer to note down the inquiry in Hindi. The request of the workman was duly considered by the Inquiry Officer and his request was declined due to the reasons given by the Inquiry Officer in the inquiry proceedings dated 09.05.2016. The inquiry was conducted in accordance with the principles of natural justice and the report of the Inquiry Officer is un-biased. The father of the workman put up his papers voluntarily on 24.10.2016 with the request that he may be relieved on 04.04.2017. The request of the father of the workman was allowed and accordingly, he was relieved on 04.04.2017, for this he was issued a letter by the management and the same was duly accepted by him on 27.10.2016. So, the allegations of the workman that his father was made to leave the job are absolutely false, frivolous and groundless. A copy of report of the Inquiry Officer was sent to the workman *vide* letter dated 04.08.2016 and the workman submitted his comments *vide* his letter dated 26.08.2016. The comments of the workman were thoroughly perused and the various allegations, as made by the workman, in his comments were found to be incorrect, false and baseless. Order of termination dated 01.12.2016 is legal and fully sustainable in the eyes of law and is not liable to be set aside on the grounds :—

- a) The order of termination is in accordance with the principles of natural justice.
- b) The Inquiry Officer was appointed in accordance with the Certified Standing Orders of the company. There has been no contravention on that account.
- c) Order of termination is legal and also as per terms & conditions of appointment letter dated 11.08.2007 of the workman. There has been no contravention of the standing orders.
- d) Order of termination is legal and the same fully disclose the compelling circumstances for which the management had to dispense with the services of the workman.
- e) The management of the company adhere the statutory provisions of the ID Act.
- f) The workman was given full opportunity in domestic inquiry conducted against him. Despite the order of punishment dated 05.09.2016, the workman did not show any improvement in his attendance.

Order of dismissal dated 01.12.2016 is legal bonafide, justified and the same is in accordance with the principles of natural justice and Certified Standing Orders of the company. The workman is not entitled to any relief whatsoever including the relief of reinstatement into service with back wages and continuity of service. Remaining averments of the statement of claim are denied being wrong. Prayer is made that present reference may be dismissed with exemplary cost.

4. The workman filed replication, wherein the contents of written statement are denied as wrong except the admitted facts of the claim and the averments of the statement of claim are reiterated.

5. From the pleadings of the parties, following issues were framed *vide* order dated 01.03.2018 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

6. In evidence, the workman Johny Verma examined himself as AW1 and tendered his affidavit Exhibit 'WA' along with documents i.e. appointment letter dated 11.08.2007 issued by the Factory Manager for Groz Beckert Asia Pvt. Ltd. *vide* Exhibit 'WW1/1' and copy of termination order / punishment order dated 01.12.2016 *vide* Mark 'WA' whereby the workman was dismissed from service and thereby relieved from service w.e.f. 01.12.2016. On 16.07.2021 learned representative for the workman closed evidence of the workman.

7. On the other hand, the management examined MW1 Ajay Kumar Patyal - Senior Executive (HR), Groz Beckert Asia Pvt. Ltd., Chandigarh who tendered his affidavit Exhibit 'MW1/A' along with documents Exhibit 'M7' to 'M13'. It is pertinent to mention that during the cross-examination of AW1 Johny Verma learned representative for management put documents Exhibit 'M1' to 'M6' to him.

Exhibit 'M1' - The appointment letter dated 11.08.2007 issued by the Factory Manager for Groz Beckert Asia Pvt. Ltd. appointing Jonny Verma as Technician in Category - II in their organization w.e.f. 13.08.2007 on the terms & conditions incorporated therein.

Exhibit 'M2' - The original inquiry file containing defence statement dated 03.06.2016 of Jonny Verma examined as DW1 in inquiry proceedings.

Exhibit 'M3' - Copy of forwarding letter dated 04.08.2016 of supply of copy of inquiry report relating to domestic inquiry to Jonny Verma.

Exhibit 'M4' - Copy of reply dated 26.08.2016 to the Inquiry Officer.

Exhibit 'M5' - Copy of punishment order dated 05.09.2016 of suspension from service for a period of 15 days w.e.f. 06.09.2016 to 20.09.2016.

Exhibit 'M6' - Copy of order dated 01.12.2016 of disciplinary action of the management whereby the workman Jonny Verma was relieved from service w.e.f. 01.12.2016.

Exhibit 'M7' - Copy of show cause notice dated 11.04.2016 calling explanation of Jonny Verma for remaining absent without permission on various dates during March 2015 to March 2016.

Exhibit 'M8' - Copy of order dated 24.10.2016 whereby request of Satpal Verma (father of the workman Jonny Verma) for early retirement from the service of the company was accepted subject to terms & conditions mentioned therein.

Exhibit 'M9' - Copy of details of absenteeism in respect to Jonny Verma (E-Code 430767) for the period w.e.f. 04.10.2016 to 28.11.2016.

Exhibit 'M10' - Copy of IBDI Bank statement for December, 2016 incorporating relevant entry against dated 03.12.2016 relating to payment of ₹ 66,354/- to Jonny Verma through bank transaction (NEFT).

Exhibit 'M11' - Statement of November & December, 2016 of full & final dues including one months' wage for amount of ₹ 66,354/-.

Exhibit 'M12' - Copy of letter dated 15.12.2016 issued by the management to Jonny Verma through registered post *vide* postal receipt dated 15.12.2016 whereby payment of ₹ 1,03,275/- through cheque No. 005474 dated 15.12.2016 was sent to Jonny Verma towards payment of gratuity.

Exhibit 'M13' - is copy of acknowledgment of R/C sent through postal receipt dated 15.12.2016 bearing postal remarks of various dated 16/12, 17/12, 19/12, 20/12, 21/12 and 22/12 of 'Not Met'.

On 26.08.2022, learned representative for the management closed the evidence on behalf of the management. The complete inquiry file is attached.

8. I have heard the arguments of learned representative for the parties and perused the judicial file. My issue-wise findings are as below:-

Issue No. 1 :

9. Onus to prove this issue is on the workman.

10. Under this issue the workman Jonny Verma examined himself as AW1 and *vide* his affidavit Exhibit 'WW1/1' deposed the averments of statement of claim in toto and supported his oral version with document Exhibit 'WW1/1' and Mark 'A'.

11. On the other hand, the management examined MW1 Ajay Kumar Patyal - Senior Executive of the management company, who *vide* his affidavit Exhibit 'MW1/A' deposed all the material contents of written statement / reply and supported his oral version with documents Exhibit 'M1' to 'M13'.

12. From the oral as well as documentary evidence led by the parties, it comes out that the workman was appointed as Technician in Category - II the organization of the management w.e.f. 13.08.2007 *vide* appointment letter Exhibit 'WW1/1', subject to various terms & condition. Condition No.7 of appointment letter is reproduced as below :—

"7. That in the event of your becoming a permanent worker, if you wish to terminate your employment with the Company you shall give prior notice of one month in writing or wages in lieu thereof, of your intention to do so to the Management and in the event of the Management wishing to terminate your employment for any reason other than for misconduct, they shall give you prior notice of one month in writing or wages in lieu thereof."

13. The workman was issued show cause notice dated 11.04.2016 / Exhibit 'M7' for remaining absent from duty without permission, thereafter charge sheet *vide* charge sheet dated 22.04.2016 was issued to the workman. The explanation of the workman was found un-satisfactory and it was decided to constitute a domestic enquiry in the charge sheet. The workman participated in the inquiry proceedings and contested the same. The workman was found guilty of misconduct. The inquiry report was supplied to the workman *vide* letter dated 04.08.2016 / Exhibit 'M3' to which the workman filed reply dated 26.08.2016 i.e. Exhibit 'M4'. The workman was imposed punishment of suspension without pay for 15 days for the period w.e.f. 06.09.2016 to 20.09.2016 *vide* order dated 20.09.2016 *vide* Exhibit 'M5'. The workman allegedly did not show any improvement in his conduct despite suspension order Exhibit 'M5', rather immediately after the suspension order, remained absent for a period of more than 10 days during October, 2016 and November, 2016. Thus, *vide* punishment order dated 01.12.2016 / Exhibit 'M6' while taking disciplinary action, the workman was relieved from duty w.e.f. 01.12.2016.

14. The workman in paragraph No.8 of the statement of claim has pleaded that the management called the workman and his father in the office and asked his father either to resign from the service or the services of his son shall be terminated consequent to the inquiry. The Manager of the management further put the condition that if the father of workman accepts to resign then the workman will not be terminated but will be suspended for 10-15 days. In paragraph No.10 of the statement of claim the workman pleaded that subsequently the management issued an order of punishment *vide* letter dated 05.09.2016 and suspended the workman without pay for 15 days and the father of the workman was relieved from his services *vide* order dated 24.10.2016. In paragraph No.11 of the statement of claim the workman pleaded that the management again victimized the workman and has terminated his services.

15. To my opinion the aforesaid plea taken by the workman does not stand proved because as per order dated 24.10.2016 / Exhibit 'M8', the workman's father Satpal Verma himself requested the management company for early retirement from service of the company which was accepted subject to terms & conditions mentioned therein. Moreover, Satpal Singh did not step into the witness box to say that he was forced to leave the job by way of early retirement. Neither it is the plea nor there is any evidence to show that Satpal Singh has challenged the order dated 24.10.2016 / Exhibit 'M8'.

16. From documents Exhibit 'M2' i.e. inquiry file of the workman containing his defence statement dated 03.06.2016, Exhibit 'M3' copy of letter of supply of inquiry report, Exhibit 'M4' copy of reply dated 26.08.2016 to the inquiry report, Exhibit 'M7' i.e. copy of show cause notice dated 11.04.2016, it is duly proved on record that the management has conducted the domestic inquiry by adopting due procedure and by providing full opportunity to the workman to participate and defend the domestic inquiry and the said opportunity was availed by the workman. When put to cross-examination AW1 Jonny Verma stated that he has seen the original inquiry file containing 76 pages and he identify his signatures on the proceedings in inquiry, original enquiry file is Exhibit 'M2'. This inquiry was conducted by Sh. Bipin Sharma. In the enquiry proceedings his co-worker was Sh. Vikas Ani. In the inquiry the management produced two witnesses namely Sh. Ajay Patyal and Sh. Deepak Kutlehria. AW1 admitted as correct that they were examined in his presence and in the presence of his co-workers. They were cross-examined by his co-worker in his presence. AW1 admitted as correct that he made his defence statement in the inquiry which is at page No.57 of the inquiry file Exhibit 'M2'. AW1 admitted as correct that he produced two witnesses in his defence in the inquiry namely Sh. Satpal and Sh. Gomti Yadav. Both these persons were also working with him in the respondent-company. AW1 admitted as correct that the Inquiry Officer found him guilty of the charges *vide* report dated 07.07.2016. A copy of report of the Inquiry Officer was given to him for his comments *vide* letter dated 04.08.2016, which is Exhibit 'M3' and he submitted his reply to the same *vide* his letter dated 26.08.2016, which is Exhibit 'M4'. AW1 admitted as correct that thereafter order of punishment dated 05.09.2016 was issued to him, whereby he was suspended for 15 days without wages for the period from 06.09.2016 to 20.09.2016. He has seen the original and copy of the same is Exhibit 'M5'. AW1 denied as wrong that he remained absent from duty un-authorisedly for a period of 10-15 days during the period from 01.10.2016 to 31.11.2016 besides 7 days absent without permission. Again said he remained absent from duty but not without permission. He did not have any application to show that he had taken permission from the management. AW1 further stated that he was relieved from employment of the respondent-company *vide* letter dated 01.12.2016, which is already on court file *vide* Mark 'A'. AW1 admitted as correct that he received his termination letter dated 01.12.2016 by post which is Exhibit 'M6'. AW1 admitted as correct that termination letter dated 01.12.2016 was personally served upon him by the HR Head on 01.12.2016 and he refused to receive the same.

17. The aforesaid version of AW1 / Jonny Verma would prove beyond doubt that he was terminated from services after adopting of due procedure of domestic inquiry. At no stage of inquiry proceedings any prejudice is caused to the workman. Though the workman alleged bias against the Inquiry Officer but failed to lead any evidence to the effect that the Inquiry Officer is inimical or biased towards him. There is no reason to believe that the Inquiry Officer has given a biased inquiry report.

18. Furthermore the termination of service of the workman is as per condition No. 7 of the appointment letter Exhibit 'M1', according to which in the event of the management wishing to terminate the employment of the workman for any reason other than for misconduct, they will give the workman prior notice of one month in writing or wages in lieu thereof. In the present case, after termination all the dues in the sum of ₹ 66,354/- are paid to the workman including bonus, leave encashment, wages in lieu of one month notice through bank transaction NEFT as reflected in bank statement Exhibit 'M10'. Besides, payment of gratuity in the tune of ₹ 1,03,275/- is made through Cheque No.005474 dated 15.12.2016 sent through registered post. In this regard AW1 Jonny Verma in his cross-examination admitted as correct that the management transferred some money in his account through NEFT after his termination but he cannot tell the exact amount. He does not know that the management has sent a registered letter on 15.12.2016 along with cheque for ₹ 1,03,275/- for his gratuity as the said letter was received back undelivered to the management.

19. The plea of the management that after termination workman is gainfully employed stands proved from the cross-examination of AW1 Jonny Verma wherein he stated that these days he earn ₹ 10,000/- to ₹ 15,000/- per month. He do Karigiri in sliver items. The shop is on rent in Saketeri Village. Moreover, Standing Order of the company empowers the management to terminate the services of the workman by giving one month notice or by paying one month wage in lieu thereof. Standing Order 19(a) is reproduced below :—

"19. TERMINATION OF SERVICE

(a) The employment of any workman who has completed one year continuous service as defined in the I.D. Act may be terminated by the manager by giving one month notice in writing in Form 'D' appended or by payment of one month's wages in lieu thereof. If he draws wages on a piece-rate basis, the wages shall be computed on the average daily earnings of such workman for the days actually worked during the previous wage period. The reasons for the termination of service shall be recorded in writing by the Manager and shall be communicated to the workman if he so desires at the time of discharge, unless such communication is likely to incriminate the company."

20. As per the aforesaid standing orders, the reasons for the termination of services shall be recorded in writing by the Manager and shall be communicated to the workman, if he so desires, at the time of discharge unless such communication is likely to incriminate the company.

21. In this case communication of termination order / Exhibit 'M6' to the workman is admitted. Our own Hon'ble High Court in **Shakuntala Devi Versus M/s Dynamic Fashion Private Ltd. & Others reported in 2019 LLR 616 (P&H)** held that un-authorised absence is a serious and grave misconduct causing indiscipline at the workplace. It is held that misconduct being grave and serious fortifies punishment of termination.

22. In the light of discussion made above, the termination order dated 01.12.2016 / Exhibit 'M6' is legal and valid and the workman has failed to prove that his services were terminated illegally by the management.

23. Accordingly, this issue is decided against the workman and in favour of the management.

Relief :

24. In the view of foregoing finding on the issue above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.). . .,

The 30th August, 2022.

(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0152.

Secretary Labour,
Chandigarh Administration.

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CORRECTION SLIP

The 21st November, 2022

No. 84 Rules/II.D4.—Pursuant to the directions given by Hon'ble Supreme Court of India in Civil Appeal Nos. 1659-1660 of 2021 titled as "Rahul S. Shah vs. Jinendra Gandhi", the following amendments/insertions/substitutions are made in the **Rules and Orders of Punjab and Haryana High Court, Volume-I** :—

(I) **The following words are inserted at the end of existing Rule 5, Part F, Chapter 1 :—**

"However, in suits relating to delivery of possession of property, the Court must examine the parties in relation to third party interest in such property."

(II) **The following words are inserted at the end of sub-rule (ii) of Rule 12, Part F, Chapter 1 :—**

"In suits relating to delivery of possession of property, the Court must ask the parties to disclose and produce documents, upon Oath, which are in possession of the parties including declaration pertaining to third party interest in such properties."

(III) **The existing Rule 3 of Part-A, Chapter 10 is re-numbered as Rule 3 (i) and after Rule 3 (i) a new sub-rule (ii) is inserted as under :—**

"(ii) In suits relating to delivery of possession of property, where the possession over the property is not disputed by the parties and if the Court deems it appropriate, it may appoint a Commissioner to assess the accurate description and status of the property."

(IV) **The following words are inserted at the end of clause (vi) of sub-rule (a) of Rule 3, Part C, Chapter 1 :—**

"Upon examination of parties under Order X or upon production of documents under Order XI or on the receipt of report of Local Commissioner, the Court may add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit."

(V) **The heading of sub-part (a) of Part-L, Chapter 1, is substituted as under :—**

"(a) Attachment before judgment, temporary injunctions and appointment of receiver etc."

(VI) **In sub-part (a) of Part-L, Chapter 1, after Rule 4 the following Rule 5 is inserted :—**

"5. Appointment of Receiver :—Under Order XL Rule 1 of CPC the Court may appoint receiver to monitor the status of the property in question as custodia legis (in the custody of law) for proper adjudication of the matter specifying as to whether receiver shall take actual physical or symbolic possession thereof."

(VII) The following para is inserted at the end of Rule 1, Part B, Chapter 11 :—

"In suits relating to delivery of possession of a property, before passing the decree, the Court must ensure that the decree is unambiguous so as to not only contain clear description of the property, but also having regard to the status of the property."

(VIII) The following words are inserted at the end of Rule 1, Part E, Chapter 12 :—

"In the case of money suit, the Court must for reasons to be recorded, invariably resort to Order XXI Rule 11 of CPC ensuring immediate execution of decree for payment of money on oral application."

(IX) The following words are inserted at the end of Rule 4, Part F, Chapter 1 :—

"In a suit for payment of money, before settlement of issues the Court may require the defendant to disclose his assets on Oath, to the extent the defendant is made liable in the suit. Further in the event of disclosure of assets by the defendant, the Court while exercising powers under Section 151 C.P.C. may also direct the revenue or municipal authorities or the Registrar appointed under the Registration Act to make an entry in the record to the effect that alienation, if any of such property shall be subject to the decision of the pending suit."

(X) Rule 6 is inserted after Rule 5 in sub-part (a) of Part-L, Chapter-1, as under :—

"6. Ensuring satisfaction of decree :—In a suit for payment of money, the Court may in appropriate cases at any stage of the suit demand security from the defendant to ensure satisfaction of decree exercising the powers under Section 151 CPC."

(XI) The following words are inserted at the end of Rule 4, Part C, Chapter 12 :—

"If a third party claim(s) right(s) in the property subject matter of decree under execution by filing an application under Section 47 or Order XXI of the Code of Civil Procedure, 1908 and the Court is of the opinion that the application is frivolous, it shall record reasons while declining to issue notice thereof. The Court should also refrain from entertaining such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

The Court should in appropriate cases where it finds the objection or resistance or claim to be frivolous or *mala fide*, resort to sub-rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with Section 35A."

(XII) Rule 8 is inserted after Rule 7, Part-A, Chapter 12 as under :—

"8. Expeditious disposal of Execution :—The Executing Court must make efforts to dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay. The Court may on the request of either of the parties to the suit or of its own, in appropriate cases at the time of passing the decree, for reasons to be recorded in writing fix a date for commencement of execution proceedings, register it as an execution petition and direct the parties to appear on the said date and permit the decree holder to file the formal application in the meantime."

(XIII) **Rule 4 is inserted after Rule 3, Part-Q, Chapter 12 as under :—**

"4. Direction for execution of decree with police help :—Where the Executing Court is satisfied that it is not possible to execute the decree, warrant of arrest and/or distress without police assistance, it may direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt with stringently in accordance with law."

BY ORDER OF HON'BLE THE CHIEF JUSTICE AND JUDGES.

(Sd.). . .,

(ARUN KUMAR AGGARWAL),
Registrar (Rules),
for Registrar General.

CHANGE OF NAME

I, Sangeeta Devi, W/o Anil Kumar, R/o H. No. 679, Near Market Sector 8-B, Chandigarh, have changed my name from Sangeeta Devi to Sangeeta Mary.

[888-1]

I, Krishna, S/o Ravi Kumar Vishal, # 96, Chandi Kusht Ashram, Chandigarh, have changed my name to Hari Krishan Vishal.

[889-1]

I, Gurinder Singh, S/o Devinder Singh, R/o # 600, Dera Sahib, Manimajra, Chandigarh, have changed my name to Gurinder Singh Saini.

[890-1]

I, Shivani, D/o Ramesh, # 2805, Sector 25-D, Chandigarh, have changed my name to Shivaay after change of gender from female to male.

[891-1]

I, Vikas, S/o Yad Ram Yadav, # 178-B, Khuda Alisher, Chandigarh, have changed my name from Vikas to Vikas Yadav.

[892-1]

I, Anita, W/o Vikas Yadav, # 178-B, Khuda Alisher, Chandigarh, have changed my name from Anita to Anita Kumari.

[893-1]

I, Sonia, W/o Sh. Tasleem Ahmed, R/o H. No. 67, Bapu Dham Colony, Ph. II, Sector 26, Chandigarh, have changed my name to Aaisha Parveen.

[894-1]

I, Raja Singh Maurya, S/o Jagaropan Singh, # 27, Block No. 2001, Sector 32-C, Chandigarh, have changed my name to Raja Singh Mourya.

[895-1]

मैं, ऊष्मा देवी, पत्नी श्री सुरिंदर कुमार, निवासी 1183, बुडैल, सेक्टर 45, चंडीगढ़, ने अपना नाम बदलकर ऊष्मा देवी से सुभद्रा रख लिया है ।

[896-1]

I, Zafer Alam, S/o Mohammad Aslam, # 72, New Police Line, Sector 26, Chandigarh, have changed my name to Zafar Alam.

[897-1]

I, Kamaljit Kaur Virk, D/o Anoop Singh Virk and W/o Darshan Singh Pandher, R/o 4257, Sector 46-D, Chandigarh, changed my name to Kamaljit Kaur Pandher.

[898-1]

I, Abhay Partap Singh Sidhu, S/o Amrikpal Singh Sidhu, House No. 58, Sector 9-A, Chandigarh, have changed my name from Abhay Partap Singh Sidhu to Kultar Singh Sidhu.

[899-1]

"No legal responsibility is accepted for the contents of publication of advertisements/public notices in this part of the Chandigarh Administration Gazette. Persons notifying the advertisements/public notices will remain solely responsible for the legal consequences and also for any other misrepresentation etc."